

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: TESTOSTERONE REPLACEMENT)
THERAPY PRODUCTS LIABILITY)
LITIGATION) Master Docket Case No. 1:14-cv-1748
)
) MDL No. 2545
)
This document relates to: All cases) Hon. Matthew J. Kennelly
)

**DEFENDANTS' MOTION FOR LEAVE TO FILE SEPARATE MOTIONS INCLUDING
FOR GENERAL AND CASE-SPECIFIC EXPERTS AND TO EXCEED PAGE LIMITS**

Defendants AbbVie Inc. and Abbott Laboratories (collectively “AbbVie”) respectfully move this Court for leave to file separate motions, including for general and case-specific experts, and memoranda of law in excess of fifteen pages in support for their motion for summary judgment in *Kibat* and in excess of fifteen pages in support of their motions to exclude expert testimony for the six Trial Group 1 cases. In support of this motion, AbbVie states as follows:

1. The Court set a deadline of June 14, 2018, for the parties to file any motion for summary judgment or seeking to challenge expert testimony pursuant to *Daubert*. Corrected Case Management Order No. 87, Jan. 23, 2018, at 4 (Doc. 2342).
2. Local Rule 7.1 provides that briefs in support of or in opposition to any motion shall not exceed 15 pages without prior approval of the court.
3. Plaintiffs’ 129-page Fourth Amended Complaint asserts claims for strict liability – design defect, strict liability – failure to warn, negligence, negligent misrepresentation, breach of implied warranty of merchantability, breach of express warranty, fraud, rehhibition, consumer protection, unjust enrichment, wrongful death, survival action, loss of consortium, and punitive damages.

4. There are six Trial Group 1 Plaintiffs whose cases are being prepared for trial. The factual records developed for all six of these cases have required the collection of thousands of pages of medical records and dozens of case-specific depositions.

5. Trial Group 1 Plaintiffs have disclosed 11 experts who have provided hundreds of pages of expert reports and over 5,000 pages of deposition testimony. Since the Court considered AbbVie's initial motions to exclude expert testimony in May 2017 (*see* CMOs 46 & 48), Plaintiffs served the following reports for 10 of their proposed Trial Group 1 experts:

Witness	General Opinions	Case-Specific Opinions
1. Hossein Ardehali	Supplemental (Jan. 15, 2018) Supplemental (Apr. 10, 2018)	<i>Abraham</i> (Apr. 15, 2018) <i>Papandrea</i> (Apr. 22, 2018)
2. Charles Gbur		<i>Kibat</i> (Apr. 16, 2018)
3. B. Burt Gerstman	Supplemental (Apr. 16, 2018)	
4. David Kessler	Supplemental (Jan. 16, 2018) 2nd Addendum (Apr. 16, 2018)	
5. Peggy Pence	Supplemental (Jan. 15, 2018) Supplemental (Apr. 16, 2018)	
6. Henry Rinder	Supplemental (Mar. 19, 2018)	
7. Morton Rinder	General Report (Apr. 16, 2018)	<i>Bechtholdt</i> (Apr. 16, 2018)
8. Martin Wells	Supplemental (Apr. 16, 2018)	
9. Ronald Ziman	General Report (Apr. 24, 2018)	<i>Harris</i> (Apr. 24, 2018) <i>Natale</i> (Apr. 24, 2018)
10. Douglas Zipes	General Report (Apr. 16, 2018)	

Plaintiffs did not serve a new report for their 11th expert, Perry Halushka.

6. To address case-specific dispositive issues, AbbVie intends to file a separate summary judgment motion in each of the six Trial Group 1 cases. AbbVie also intends to file

Daubert motions as to each of the 11 experts identified by Plaintiffs and two case-specific *Daubert* motions for Dr. Ronald Ziman, who produced three reports (a general causation report and specific causation reports in *Harris* and *Natale*). In total, AbbVie anticipates filing 6 summary judgment motions and 13 *Daubert* motions.¹

7. Given the scope of the claims and the extensive discovery records, AbbVie anticipates the need to exceed this Court's 15-page limit for its memorandum in support of summary judgment in *Kibat* and the 15-page limit for its *Daubert* motions as to three experts – Dr. Ardehali, who provided two supplemental reports and two case specific opinions, Dr. Ziman, who provided a new general causation opinion and two case-specific opinions, and Dr. Zipes, who has not yet been subject to *Daubert* challenge in this litigation. Accordingly, AbbVie respectfully requests leave to file to file the following:

- a. A memorandum in support of AbbVie's motion for summary judgment in *Kibat* ***not to exceed 20 pages;***
- b. Three memoranda in support of AbbVie's motions to exclude Dr. Ziman's testimony (general causation and specific causation opinions in *Harris* and *Natale*) ***not to exceed a total of 50 pages for all three memoranda;*** and
- c. Memoranda in support of AbbVie's motion to exclude the testimony of Dr. Zipes and motion to exclude the testimony of Dr. Ardehali ***not to exceed 30 pages each.***

8. Except as requested above, AbbVie's remaining memoranda will be within the Court's 15-page limits (i.e., up to 15 pages for each case-specific motion for summary judgment and up to 15 pages for each *Daubert* motion).

¹ A similar approach was adopted by Judge Goodwin in *In re: Ethicon, Inc., Pelvic Repair System Prods. Liab. Litig.*, No. 2:12-md-02327, Pretrial Order #210 (Dec. 18, 2015), attached as Exhibit A.

For the reasons stated above, AbbVie respectfully requests that the Court grant this motion and allow AbbVie to file separate motions as described above and memoranda of law in excess of 15-pages in support of its motion for summary judgment in *Kibat* and in excess of 15-pages in support of its motions to exclude expert testimony of Dr. Ardehali, Dr. Ziman, and Dr. Zipes.²

Dated: June 11, 2018

Respectfully submitted,

/s/ Alicia J. Donahue

Alicia J. Donahue

Shook Hardy & Bacon

One Montgomery St., Suite 2700

San Francisco, CA 94104

T: 415.544.1900

F: 415.391.0281

adonahue@shb.com

David M. Bernick

**Paul, Weiss, Rifkind, Wharton &
Garrison LLP**

1285 Avenue of the Americas

New York, NY 10019-6064

Phone: (212) 373-3405

Fax: (212) 492-0405

dbernick@paulweiss.com

Michelle Hart Yeary

Dechert LLP

902 Carnegie Center, Suite 500

Princeton, NJ 08540

Telephone: (609) 955-3200

Facsimile: (609) 955-3259

michelle.yeary@dechert.com

Attorneys for AbbVie Inc. and Abbott Laboratories

² AbbVie conferred with Plaintiffs' counsel regarding the requested relief, but they were not willing to agree.

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2018, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ Alicia J. Donahue
Alicia J. Donahue